IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

WEDNESDAY, THE 7TH NOVEMBER 2007 / 16TH KARTHIKA 1929

WP(C).No. 24244 of 2007(J)

PETITIONER:

CHANDRASEKHARAN, S/O. ACHUTHAN,
AGED 49 YEARS, PALLISSERY PARAMBIL,
PALARIVATTOM DESOM, EDAPPALLY THEKKUM BHAGOM
VILLAGE, KANAYANNOOR TALUK,
ERNAKULAM DISTRICT.

BY ADV. SRI.K.J.KURIACHAN

RESPONDENTS:
----

1. **THE DISTRICT COLLECTOR,**
   ERNAKULAM, COLLECTORATE, KAKKANAD.

2. **THE SPECIAL TAHSILDAR (L.A.),**
   ICTT, VELLARPADAM, ELOOR.

3. **MRS. SISOMMA EAPEN, W/O. EAPEN,**
   AGED 70 YEARS, THETTAYIL PUTHENVEETTIL HOUSE,
   KUTTIKKATTUKARA, KADUNGALLOOR VILLAGE,
   PARAVOOR TALUK, ERNAKULAM DISTRICT.

BY ADV. SRI.EISAC NINAN -R3
SRI.RAJESH KUMAR.T.K.
BY GOVERNMENT PLEADER SRI.BASANT BALAJI - R1 & R2

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 07/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C) NO.24244/2007

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE SALE DEED NO.1038/94 DT. 21.2.94.

EXT.P2:- COPY OF THE SECTION 9(3) NOTICE DT. 1.2.07.

EXT.P3:- COPY OF THE CLAIM STATEMENT DT. 2.5.07.

EXT.P4:- COPY OF THE TAX RECEIPT DT. 26.12.02.

EXT.P5:- COPY OF THE TAX RECEIPT DT. 5.2.07.

EXT.P6:- COPY OF THE PROPERTY TAX RECEIPT DT. 20.1.07.

EXT.P7:- COPY OF THE NON-ENCUMBRANCE CERTIFICATE FROM THE SUB REGISTRY OFFICE ALANGAD FOR THE PERIOD OF 1.1.93 TO 15.2.07.

EXT.P8:- COPY OF THE NOTICE DT. 22.6.07.

EXT.P9:- COPY OF THE NOTICE DT. 9.7.07.

EXT.P10:- COPY OF THE REPLY DT. 18.7.07.

/TRUE COPY/

P.A. TO JUDGE

tss

K.PADMANABHAN NAIR, J.

W.P.(C) No.24244 of 2007

Dated this the 7th November, 2007.

J U D G M E N T

The main prayer in this writ petition is for issuance of a direction to respondents 1 and 2 to pass an award for 0.81 Ares of property, holding that the same belongs to the petitioner. The 3rd respondent was the owner of 9 cents of property. She sold two cents (81 Sq.meters of land) to the petitioner, as per Ext.P1 sale deed No.1038/1994 of SRO, Alangad. The property of the petitioner, as well as the remaining property owned by the 3rd respondent was acquired for the purpose of ICTT Project, Vallarpadam. An award was passed by which the petitioner was awarded compensation for 0.24 Ares, which is equivalent to ½ cent of property. According to the petitioner, he purchased 81 Sq.Meters of land from the 3rd respondent. He is the absolute owner of that land and entitled to get compensation for the entire extent.

2. The learned Government Pleader, on instructions, submitted that in view of the dispute raised by the petitioner, a detailed measurement was made, and it was found that the petitioner

was in possession of 0.00.24 hectares of revenue land and 0.00.69 hectares of Government Land. He had constructed a workshop covering the entire property. The stand taken by the Government is that 0.00.69 hectares of land is Government Land, and as such, the petitioner is not entitled to get compensation for that land. In paragraph 7 of the writ petition, the petitioner had contended that the 3rd respondent was in undisputed, open, peaceful and uninterrupted possession of the entire property for more than 50 years and hence petitioner along with the 3rd respondent had perfected the title over that property, by adverse possession and limitation. It is contended that 3rd respondent had mortgaged the entire 9 cents of property and availed a loan from a financial institution on the strength of possession certificate issued by the Revenue Officials. Hence, petitioner claims the entire amount. The award passed in this case shows that the Land Acquisition Officer had passed an award by which the petitioner was awarded compensation for 24 Sq.Metres of land alone. That amount was deposited in Court under Section 31(2) of the Land Acquisition Act. But it is seen that he has not referred the question as to whether the petitioner is entitled to get compensation for the remaining 0.00.69 hectares of land. Since the petitioner is claiming title to that land by adverse possession and limitation, it is only just and proper

that the Land Acquisition Officer passes an award in respect of 0.00.69 hectares of land wherein the workshop of the petitioner is situated, and refer that matter to the competent Subordinate Judges' Court for determination as to whether petitioner and 3rd respondent had perfected their title to that property by adverse possession and limitation. If there is a claim for enhancement, that fact also shall be referred and not the claim for title alone.

In the result, the writ petition is disposed of with a direction to the Land Acquisition Officer to pass an award in respect of 0.00.69 hectares of land comprised in 28/6/B of Kadungalloor Village, which according to the Land Acquisition Officer is a Government Purampoke, and which is shown as a green coloured plot in the plan prepared by the Taluk Surveyor and refer that question to the competent civil court under Section 31(2) of the Land Acquisition Act. In case, there is a claim for enhancement under Section 18 of the Land Acquisition Act, that question shall also be referred. It is open to both sides to adduce evidence.

K.PADMANABHAN NAIR,
JUDGE

nj.